

Subpart 212.5—Applicability of Certain Laws to the Acquisition of Commercial Items

212.503 Applicability of certain laws to executive agency contracts for the acquisition of commercial items.

(a) The following laws are not applicable to contracts for the acquisition of commercial items:

- (i) 10 U.S.C. 2306(b), Prohibition on Contingent Fees.
- (ii) 10 U.S.C. 2324, Allowable Costs Under Defense Contracts.
- (iii) 10 U.S.C. 2384(b), Requirement to Identify Suppliers.
- (iv) 10 U.S.C. 2397(a)(1), Reports by Employees or Former Employees of Defense Contractors.
- (v) 10 U.S.C. 2397b(f), Limits on Employment for Former DoD Officials.
- (vi) 10 U.S.C. 2397c, Defense Contractor Requirements Concerning Former DoD Officials.
- (vii) 10 U.S.C. 2408(a), Prohibition on Persons Convicted of Defense Related Felonies.
- (viii) 10 U.S.C. 2410b, Contractor Inventory Accounting System Standards (see 252.242-7004).
- (ix) 107 Stat 1720 (Section 843(a), Public Law 103-160), Reporting Requirement Regarding Dealings with Terrorist Countries.
- (x) Domestic Content Restrictions in the National Defense Appropriations Acts for Fiscal Years 1996 and Subsequent Years, unless the restriction specifically applies to commercial items. For the restriction that specifically applies to commercial ball or roller bearings as end items, see 225.7009-3 (section 8065 of Pub. L. 107-117).

(xi) Section 8116 of the Defense Appropriations Act for Fiscal Year 2010 (Pub. L. 111-118) and similar sections in subsequent DoD appropriations acts.

(c) The applicability of the following laws has been modified in regard to contracts for the acquisition of commercial items:

- (i) 10 U.S.C. 2402, Prohibition on Limiting Subcontractor Direct Sales to the United States (see FAR 3.503 and 52.203-6).

- (ii) 10 U.S.C. 2306a, Truth in Negotiations Act (see FAR 15.403-1(b)(3)).

[60 FR 61595, Nov. 30, 1995, as amended at 63 FR 11851, Mar. 11, 1998; 63 FR 55040, Oct. 14, 1998; 65 FR 77828, Dec. 13, 2000; 67 FR 4208, Jan. 29, 2002; 69 FR 65089, Nov. 10, 2004; 73 FR 76970, Dec. 18, 2008; 75 FR 27947, May 19, 2010; 76 FR 38047, June 29, 2011; 76 FR 76319, Dec. 7, 2011]

212.504 Applicability of certain laws to subcontracts for the acquisition of commercial items.

(a) The following laws are not applicable to subcontracts at any tier for the acquisition of commercial items or commercial components:

- (i) 10 U.S.C. 2306(b) Prohibition on Contingent Fees.
- (ii) 10 U.S.C. 2313(c), Examination of Records of a Contractor.
- (iii) 10 U.S.C. 2324, Allowable Costs Under Defense Contracts.
- (iv) 10 U.S.C. 2327, Reporting Requirement Regarding Dealings with Terrorist Countries.
- (v) 10 U.S.C. 2384(b), Requirement to Identify Suppliers.
- (vi) 10 U.S.C. 2391 note, Notification of Substantial Impact on Employment.
- (vii) 10 U.S.C. 2393, Prohibition Against Doing Business with Certain Offerors or Contractors.
- (viii) 10 U.S.C. 2397(a)(1), Reports by Employees or Former Employees of Defense Contractors.
- (ix) 10 U.S.C. 2397b(f), Limits on Employment for Former DoD Officials.
- (x) 10 U.S.C. 2397c, Defense Contractor Requirements Concerning Former DoD Officials.
- (xi) 10 U.S.C. 2408(a) Prohibition on Persons Convicted of Defense Related Felonies.
- (xii) 10 U.S.C. 2410b, Contractor Inventory Accounting System Standards.
- (xiii) 10 U.S.C. 2501 note, Notification of Proposed Program Termination.
- (xiv) 10 U.S.C. 2534, Miscellaneous Limitations on the Procurement of Goods Other Than United States Goods.
- (xv) 10 U.S.C. 2631, Transportation of Supplies by Sea (except as provided in the clause at 252.247-7023, Transportation of Supplies by Sea).
- (xvi) Domestic Content Restrictions in the National Defense Appropriations

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Acts for Fiscal Years 1996 and Subsequent Years, unless the restriction specifically applies to commercial items. For the restriction that specifically applies to commercial ball or roller bearings as end items, see 225.7009-3 (section 8065 of Pub. L. 107-117).

(xvii) Section 8116 of the Defense Appropriations Act for Fiscal Year 2010 (Pub. L. 111-118) and similar sections in subsequent DoD appropriations acts.

(b) Certain requirements of the following laws have been eliminated for subcontracts at any tier for the acquisition of commercial items or commercial components:

(i) 10 U.S.C. 2393(d), Subcontractor Reports Under Prohibition Against Doing Business with Certain Offerors (see FAR 52.209-6).

(ii) 10 U.S.C. 2402, Prohibition on Limiting Subcontractor Direct Sales to the United States (see FAR 3.503 and 52.203-6).

[60 FR 61595, Nov. 30, 1995, as amended at 61 FR 58488, Nov. 15, 1996; 62 FR 5780, Feb. 7, 1997; 65 FR 14401, Mar. 16, 2000; 65 FR 39704, June 27, 2000; 65 FR 77828, Dec. 13, 2000; 69 FR 63331, Nov. 1, 2004; 73 FR 76970, Dec. 18, 2008; 75 FR 27947, May 19, 2010; 76 FR 38048, June 29, 2011; 76 FR 58146, Sept. 20, 2011; 76 FR 76319, Dec. 7, 2011]

212.570 Applicability of certain laws to contracts and subcontracts for the acquisition of commercially available off-the-shelf items.

Paragraph (a)(1) of 10 U.S.C. 2533b, Requirement to buy strategic materials critical to national security from American sources, is not applicable to contracts and subcontracts for the acquisition of commercially available off-the-shelf items, except as provided at 225.7003-3(b)(2)(i).

[74 FR 37636, July 29, 2009]

Subpart 212.6—Streamlined Procedures for Evaluation and Solicitation for Commercial Items

212.602 Streamlined evaluation of offers.

(b)(i) For the acquisition of transportation and transportation-related services, also consider evaluating offers in accordance with the criteria at 247.206(1).

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(ii) For the acquisition of transportation in supply contracts that will include a significant requirement for transportation of items outside the contiguous United States, also evaluate offers in accordance with the criterion at 247.301-71.

(iii) For the direct purchase of ocean transportation services, also evaluate offers in accordance with the criteria at 247.573-2(c).

[65 FR 50143, Aug. 17, 2000, as amended at 70 FR 35544, June 21, 2005; 72 FR 49205, Aug. 28, 2007]

Subpart 212.70—Pilot Program for Transition to Follow-On Contracting After Use of Other Transaction Authority

SOURCE: 69 FR 63330, Nov. 1, 2004, unless otherwise noted.

212.7000 Scope.

This subpart establishes the pilot program authorized by Section 847 of the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108-136).

212.7001 Definitions.

As used in this subpart—

Nontraditional defense contractor means a business unit that—

(1) Has entered into an other transaction agreement with DoD; and

(2) Has not, for a period of at least 1 year prior to the date of the other transaction agreement, entered into or performed on—

(i) Any contract that is subject to full coverage under the cost accounting standards described in FAR Part 30; or

(ii) Any other contract exceeding \$500,000 to carry out prototype projects or to perform basic, applied, or advanced research projects for a Federal agency that is subject to the FAR.

Other transaction means a transaction that—

(1) Is other than a contract, grant, or cooperative agreement;

(2) Is not subject to the FAR or its supplements; and

(3) Is entered into in accordance with 32 CFR part 3.